Bail Slip

C.A.Nos. 426, 482, 507, 648 to 650 OF 2001

The Appellant in Crl.A.No.426 of 2001/A1 viz., N. Muthukrishnan and the Appellants in Crl.A.No.507/01 (A-3 & A-4) Viz., Ramakrishnan and Rajendran were directed to be released on bail by the order of this Court dated 17.8.01 and made in Crl.M.P.Nos. 2811 & 4608 of 2001 in Crl.A.No.426 & 507/01.

The Appellant in Crl.A.No.482/01 (A-7) Viz., N.S.Palanisamy, was directed to be released on bail by the order of this Court dated 25.6.2001 and made in Crl.M.P.No.3285/01 in Crl.A.No.482/01.

The Appellant in Crl.A.No.648/01, Viz., S.K.Sundaram (A-6) and the Appellant in Crl.A.No.649/01 Viz, D.Mayilsamy (A-2) were directed to be released on bail by the order of this Court dated 19.9.01 and made in Crl.M.P.Nos.6131 & 6136/01.

The Appellant in Crl.A.No.650/01 Viz., Nagamanickam (A-5) was directed to be released on bail by the order of this Court dated 21.9.01 and made in Crl.M.P.No.6152/01 in Crl.A.No.650/01.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.09.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NOS. 426, 482, 507, 648, 649 & 650 OF 2001

N.Muthukrishnan .. Appellant in CA 426/01 (Accused-1)
N.S.Palanisamy .. Appellant in CA 482/01 (Accused-7)

1) Ramakrishnan
2) Rajendran .. Appellants in CA 507/01(Accused-3 & Accused-4)

S.K.Sundaram .. Appellant in CA 648/01 (Accused-6)
D.Mayilsamy .. Appellant in CA 649/01 (Accused-2)
Nagamanickam .. Appellant in CA 650/01 (Accused -5)

- Vs -

State of Tamil Nadu
rep. by its
Inspector of Police
Palladam Police Station. .. Respondent in all appeals
(Crime No.970/97)

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Appeals preferred against the conviction and sentence passed by the learned II Addl. Sessions Judge, Coimbatore, made in S.C. No. 63 of 2000 dated 30.04.2001 as stated therein.

For Appellants : Mr. S.Ramasamy for
M/s. S.Subbiah in CA 426/01
Mr. P.Venkatasubramanian in CA 482/01
Mr. V.Gopinath, SC, for
Mr. John Sathyan in CA 507/01
Mr. K. Venkatasubramanian for
Mr. M.Sathyanarayanan in CA 648/01, 649 & 650/01

For Respondents : Mr. S.Jayakumar, APP

COMMON JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

This judgment shall govern all the above six appeals. C.A. No.426/01 is by A-1; C.A. No.482/01 is by A-7; C.A. No.507/01 is by A-3 and A-4; C.A. No.648/01 is by A-6; C.A. No.649/01 is by A-2 and C.A. No.650/01 is by A-5 in S.C. No.63 of 2000 on the file of the II Addl. Sessions Judge, Coimbatore.

2. The appellants before this Court in all these appeals stood charged, tried and found guilty as detailed below :-

Charge No.	Charge against	Finding	Conviction
1	A-1, A-2 and A-4 to A-6 under Section 147 IPC	Guilty	1 year R.I. and Rs.100/= fine, in default 2 months R.I.
2	A-3 under Section 148 IPC	Guilty	2 years R.I. and Rs.100/= fine, in default 2 months R.I.
3	A-1 & A-3 under Section 307 IPC	Guilty	5 years R.I. and Rs.1000/= fine, in default 1 year R.I.
4	A-1 to A-6 under Section 364 IPC	Guilty	5 years R.I. and Rs.1000/= fine, in default 1 year R.I.
5	A-7 under Section 634 read with 149 IPC	Guilty	5 years R.I. and Rs.1000/= fine, in default 1 year R.I.
6	A-7 under Section 147 IPC	Guilty	1 year R.I. and Rs.100/= fine, in default 2 months R.I.

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7	A-5 under Section 302 IPC	Guilty	Life Imprisonment
8	A-1 to A-4, A-6 and A-7 under Section 302 read with 149 IPC	Guilty	Life Imprisonment
9	A-1 to A-7 under Section 201 IPC (Additional charge)	Guilty	5 years R.I. and Rs.1000/= fine, in default 1 year R.I.

3. The short facts necessary for the disposal of this appeal, shorn of unnecessary details, could be stated thus :-

P.W.8 purchased a garden-land in respect of which there was a dispute between him and one Damodharaswamy, the father of A-3 and A-4. The said Damodharaswamy claimed that he has got a share in the field. In the circumstances, P.W.8 sought the help of A-7 to prevent the said Damodharaswamy from creating trouble. P.W.8 paid Rs.5 lakhs to A-7 in three instalments and gave him a jeep also. A-7, at the instance of P.W.8, created problems for Damodharaswamy. A case regarding the land dispute was also filed and it went in favour of P.W.8. A-7 registered a lease executed by P.W.8 in the name of one Thangamuthu. A-7 was also pestering P.W.8 to give further money, to which course P.W.8 was not amenable. Thereafter, A-7 did not show the same loyalty that he was showing towards P.W.8 and he began to show loyalty towards Damodharaswamy and began to intimidate P.W.8 directly and also by phone.

4. On 29.11.97 at about 11.00 a.m., the prosecution witnesses were making some improvements in the said garden-land. Twenty persons including A-1 to A-7 came over there and picked up a quarrel. The matter was informed to the police authorities and on the intervention of the police authorities the situation was pacified at that time.

5. On 30.11.97, at about 8.00 a.m., the deceased Muthusamy, the son of P.W.8, P.W.s 1, 2 and 5 planned to go and meet their counsel at Palladam regarding the dispute with regard to the garden-land. The deceased Muthusamy travelled in his motorbike, which stands marked as M.O.3. P.W.s 1, 2 and 5 hired a taxi belonging to P.W.7. The said taxi was also driven by P.W.7. The witnesses followed the deceased, who went in the bike. When they were proceeding near Muthukumaraswamy temple, the accused came in a jeep, which is marked as M.O.2, driven by A-1. They overtook the taxi at Palladam-Tharapuram road junction and dashed against the motorbike driven by the deceased. When the deceased fell down from the bike, A-1 attempted to cut the deceased with an aruval, but the deceased escaped. When the deceased tried to run, he was chased by the accused. A-3 beat the deceased on his leg with a stick. A-2 shouted at the other accused and asked them to throw the deceased into the jeep so that they could all take him to the garden-land of A-7. The accused took the deceased in the said jeep and proceeded towards Tharapuram. P.W.s 1, 2 and 5 chased the jeep for a distance of 4 Kms., but in vain. P.W.8 was informed over phone about the occurrence.

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6. At about 10.00 a.m., P.W.1 went to Palladam police station and gave a written report to P.W.15, the head constable, which stands marked as Ex.P-1. On the strength of the said report, Ex.P-1, a case came to be registered in crime No.970/97 against the accused for an offence under Sections 363, 307 and 109 IPC. Ex.P-15 is a copy of the printed first information report.

7. On receipt of a copy of the printed first information report, P.W.16, Inspector of Police, Palladam police station, took up investigation. He went to the scene of occurrence at about 10.30 a.m., made an inspection in the presence of two witnesses and prepared an observation mahazar, Ex.P-4. At about 11.30 a.m., he went to Trichy road near Manapalayam and prepared a rough sketch, Ex.P-16 as regards the place where the bike was found abandoned. He recovered the motorbike, M.O.3 bearing registration No.TNJ-1591, M.O.1, stick and M.O.4 series, broken glass pieces, under a mahazar, Ex.P-5, in the presence of witnesses. He seized bloodstained tar road portion, M.O.5 and sample tar road portion, M.O.6 under the cover of a mahazar, Ex.P-6. The place of occurrence was caused to be photographed through the photographer, P.W.12.

8. P.W.16, continuing with his investigation, examined P.W.s 1, 2, 4, 5, 7, 8, 9 and 10 and their statements were recorded. On 1.2.98 at about 4.30 p.m., he arrested A-1, A-2, A-4. A-1 gave a confessional statement, the admissible portion of which is marked as Ex.P-17. Consequent upon the same, he took the police party to the garden-land of A-7 and identified the place where the murder was committed. The investigating officer, P.W.16, prepared an observation mahazar, Ex.P-18 and drew a rough sketch, Ex.P-19 as regards that place. The accused, thereafter, took the police party near Alagiam bridge over Amaravathi river and identified the place where they threw the dead body of the deceased in the river. P.W.16 prepared an observation mahazar, Ex.P-20 and also drew a rough sketch, Ex.P-21 as regards that place. Thereafter, the accused were taken to the poultry farm belonging to one Balasubramaniam. They identified the jeep, M.O.2 and the same was seized under a mahazar, Ex.P-22. After the examination of the accused by the investigating officer on 1.2.98, the case was altered to one under Sections 364 (A), 302 and 201 IPC. Ex.P-23 is the first information report in the altered crime and the same was despatched to the court. On 19.4.98 P.W.16 arrested A-5 and A-6 and they were sent to court for remand. A-3 and A-7 were found absconding. After the completion of the investigation, final report was filed against the appellants before the court on 1.5.98. The case was committed to the court of sessions and necessary charges were framed.

9. In order to substantiate the charges levelled against the accused, the prosecution marched sixteen witnesses and relied on twenty-three exhibits and ten material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances found in the evidence of the prosecution witnesses. They denied all the incriminating circumstances. No defence

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witness was examined. On completion of the evidence, the court heard the arguments advanced by either side and on scrutiny of the materials, found the accused guilty and awarded the punishment as referred to above. Hence, the present appeals at the instance of the appellants, aggrieved over their conviction and sentence.

10. Learned senior counsel advancing his arguments on behalf of the appellants would submit that in the instant case, the prosecution came out with a specific case that on the date of occurrence, P.W.s 1, 2, 3, 4, 5 and 9 were all proceeding in a taxi owned and driven by P.W.7 to meet their advocate since there was a dispute raised by the accused party. The deceased was proceeding in front in a motorbike. When they were all proceeding in the taxi of P.W.7, following the deceased, the accused followed them in a jeep, which was driven by A-1. They overtook the taxi and dashed against the motorbike and when the deceased fell down, A-1 attempted to cut the deceased with an aruval, but the deceased escaped. A-3 beat him and A-2 shouted that he should be put in the jeep and taken to the garden-land of A-7. Accordingly, he was put in the car. It is the further case of the prosecution that following the abduction the deceased was murdered and thrown into the river. The learned senior counsel would submit that in order to prove the case, the prosecution relied on the direct evidence of the witnesses, namely, P.W.s 1, 2, 3, 4, 5 and 9 and of them P.W.3 turned hostile and the prosecution, therefore, very much relied on the evidence of P.W.s 1 and 2. It would be quite clear from the evidence available that these witnesses could not have seen the occurrence at all. The specific case of the prosecution was that all the prosecution witnesses followed the deceased in a taxi and the deceased was proceeding in front in a bike. The taxi was driven by P.W.7. But P.W.7 has categorically given evidence that all of them came in his taxi he drove the taxi and they found the bike of the deceased and they came to know about the incident that has happened there. Thus it would be clear from the evidence of P.W.7 that the witnesses could not have seen the occurrence at all, but they have gone to the place after the occurrence was over. Even assuming the occurrence has taken place, P.W.7 has gone to the extent of stating that it was an accident and this evidence of P.W.7, who admittedly drove the car taking all the witnesses in the car has thoroughly destroyed the case of the prosecution in which the prosecution witnesses have stated that when they were following the motorbike of the deceased, the accused overtook the taxi, dashed against the motorbike and A-1 tried to cut the deceased and when he escaped, A-3 beat him with a stick and A-2 shouted that he should be put in the car and taken to the garden-land belonging to A-7 and, therefore, in view of the evidence of P.W.7, the evidence of the eye witnesses is too tall a claim to be believed. Apart from that, the trial court has relied on the evidence of P.W.8. It is a matter of surprise to note that even as per the evidence of P.W.1, P.W.8 was informed about the occurrence when he was in his house. P.W.1 and others went to the police station and they found that P.W.8 was present there at the police station. In the instant case, learned senior counsel would further submit that even at the place of occurrence, according to the prosecution, it was the direction of A-2 to put the deceased in the jeep and take him to the garden-land of A-7 and this fact is found mentioned in the

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first information report, but even then no investigation was done by the investigating officer as regards that phase. Added further, the learned senior counsel, the case was altered to one under Section 302 IPC and other provisions of law after examination of witnesses only on 1.2.98, though the occurrence took place on 30.11.97 and there is no explanation for this enormous delay. Apart from that, the investigation in that regard was not on the proper lines. Added further the learned senior counsel that in the instant case, the dead body was never found, but the place was identified by the accused as the place of murder where the dead body was thrown into the river, but the two witnesses examined in that regard also turned hostile and, therefore, nothing is available to connect the accused with the crime and this was argued before the trial court elaborately and the trial court should have disbelieved the prosecution case, but has erroneously found the appellants guilty and, hence, they are entitled for acquittal.

11. The Court heard the learned Addl. Public Prosecutor appearing for the State on the above contentions and also perused the recorded evidence, both oral and documentary.

12. In the instant case, the specific case of the prosecution is that the son of P.W.8 was murdered and his body was thrown at a particular spot in the river. It is the admitted case that the dead body was not recovered. In order to substantiate the act of the accused that on the day of occurrence the prosecution witnesses, who according to the prosecution are eye witnesses, went in a taxi owned and driven by P.W.7, they followed the motorbike of the deceased and at the Palladam-Tharapuram road junction, the accused party overtook the taxi and dashed against the motorbike as a result of which the deceased fell down and that A-1 attempted to cut him, but the deceased escaped and, thereafter, A-3 beat him with a stick and that A-2 shouted to the other accused to put him in the jeep and take him to the garden-land of A-7 and, accordingly, he was abducted and murdered thereafter. Now, so far as the act of murder is concerned, no evidence has been putforth by the prosecution to prove the said act. But in the instant case, from the place of occurrence from which the deceased was abducted, the prosecution relied on the direct evidence of the eye witnesses. But in the instant case it is the admitted position that these witnesses, who according to the prosecution are eye witnesses, travelled in the taxi owned and driven by P.W.7. P.W.7 has categorically admitted in his evidence that it is true that they travelled in his taxi, but when they went to the place they found only the motorbike of the deceased left alone and nobody was present. Thus it would be indicative of the fact that these witnesses, who travelled in the taxi of P.W.7 could not have seen the occurrence at all. Taking into consideration the evidence of P.W.7, who drove the taxi, he also would have seen the occurrence, but P.W.7 has not whispered anything, but on the contrary would only say that when they went to the place of occurrence, they only found the motorbike. He would further add that they came to know about the incident, and as rightly pointed out by the learned senior counsel, the evidence of P.W.7 itself would be suffice to destroy the case of the prosecution that the occurrence was witnesses by the so-called witnesses.

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13. In the instant case, the occurrence had taken place on 30.11.97 and within a short time a report was given by P.W.1 to P.W.15, the head constable, who registered a case under Section 307 IPC and other provisions of law and investigation was also taken up by the investigating officer, P.W.16, on receipt of the copy of the printed first information report. Though the occurrence had taken place on 30.11.97 and a specific averment is also made against specifically named accused and apart from that there is a specific averment in the complaint that A-2 directed all the other accused to take the deceased in the jeep to the garden-land of A-7, whileso, the investigating officer, who took up investigation, should have proceeded to the garden-land of A-7 to find out the truth or otherwise of the averments made, but the investigating officer has not done so and more particularly, no investigation has been done in that regard or on the said lines. On the contrary, the case was altered to one under Section 302 IPC only on 1.2.98 after examination of the witnesses and that too nearly after a period of two months and in the interval of two months what was the investigation done has not been broughtforth.

14. Apart from that, in the instant case, the dead body was not traced out. According to the prosecution, the accused took the police party to the place where the murder took place and also to the place where they threw the dead body into the river and the investigating officer prepared an observation mahazar and drew a rough sketch in the presence of witnesses, but the two witnesses examined in that regard turned hostile. Thus there is no direct evidence as to whether such an occurrence took place and whether the deceased was actually murdered and his body was thrown into the river and, therefore, the case of the prosecution is highly doubtful, since the prosecution has not taken any action for a period of two months, which would indicate the lethargic attitude on the part of the investigating agency in this regard.

15. Though the prosecution came out with a specific case by relying on the direct evidence, this Court has to point out that the direct evidence cannot be believed for the reasons mentioned above and the prosecution is also unable to show that the witnesses actually witnessed the occurrence. Apart from that, in the instant case, the case came to be altered to one under Section 302 IPC after a period of two months and there is no explanation or acceptable legal evidence explaining the delay. In such circumstances, the trial court, without considering all the evidence placed by the prosecution in its proper perspective, has found the appellants guilty, carried away by the considerations, which are of no relevance to the case and, hence, this Court has to necessarily accept the contentions putforth on the side of the appellants and, therefore, the appellants are entitled for an acquittal.

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16. In result, the criminal appeals are allowed. The conviction and sentence awarded by the trial court are set aside and the appellants are acquitted of all the charges framed against them. Fine amounts, if any, paid by them shall be refunded. Bail bonds executed by them shall stand cancelled.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

GLN

To

1) The II Addl. Sessions Judge, Coimbatore.
2) -Do- Thro' The Principal Sessions Judge, Coimbatore.
3) The District Collector, Coimbatore.
4) The Director General of Police, Chennai.
5) The Public Prosecutor, High Court, Madras.
6) The Superintendent of Central Prison, Coimbatore.
7) The Inspector of Police, Palladam Police Station, Coimbatore District.

8. The Judicial Magistrate, Palladam
9. Do Thro the Chief Judicial Magistrate, Coimbatore

1 cc to Mr.S.Subbiah, Advocate, SR. 40606
1 cc to Mr.P. Venkatasubramanian, Advocate, Sr. 40568
1 cc to Mr.L. Mahendran, Advocate, Sr. 40764
1 cc to Mr.M. Sathyanarayanan, Advocate, SR. 40608

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